

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	
)	
A National Broadband Plan For Our Future)	GN Docket No. 09-51

**COMMENTS OF
QWEST COMMUNICATIONS INTERNATIONAL INC.**

Qwest Communications International Inc. (Qwest) submits these comments in accord with the Federal Communications Commission's (Commission or FCC) Wireline Competition Bureau (Bureau) Public Notice in the above-referenced dockets.¹

I. SUMMARY OF COMMENTS

The Bureau seeks comment on (1) the E-rate Broadband *Notice of Proposed Rulemaking* released on May 20, 2010,² (2) the Eligible Services List Further Notice of Proposed Rulemaking released on December 2, 2009,³ and the draft Eligible Services List for E-rate Funding Year 2011 provided with the Public Notice. These three documents provided a myriad of issues for comment, but Qwest focuses its comments on a few key issues that directly impact service providers participating in the E-rate program. Specifically, the Commission should:

¹ *Public Notice*, CC Docket No. 02-6 and GN Docket No. 09-51, "Wireline Competition Bureau Announces Comment Deadlines on E-rate Broadband Notice of Proposed Rulemaking, Eligible Services List Further Notice of Proposed Rulemaking, and on E-rate Draft Eligible Services List for Funding Year 2011," DA 10-1045, rel. June 9, 2010.

² *In the Matter of Schools and Libraries Universal Support Mechanism, A National Broadband Plan For Our Future*, Notice of Proposed Rulemaking, CC Docket No. 02-6, GN Docket No. 09-51, FCC 10-83, rel. May 20, 2010 (*NPRM*).

³ *In the Matter of Schools and Libraries Universal Support Mechanism*, Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 02-6, FCC 09-105, rel. Dec. 2, 2009.

(1) continue to require that all E-rate applicants use the FCC Form 470 process to initiate a competitive bidding process and select one or more service providers; (2) decline to interpret that a potential service provider's provision of information about its products and services to an applicant during the applicant's bid selection process is categorically inappropriate conduct; (3) decline to extend E-rate program support to wireless Internet access service for portable devices used off of school or library premises; and (4) decline to extend E-rate program support to leasing of dark fiber.

II. DISCUSSION

A. All E-rate Applicants Should Continue to Use the FCC Form 470 Process.

The Commission proposes to eliminate the requirement that applicants for Priority 1 services file FCC Form 470 and wait 28 days before signing a contract with their selected service provider, as long as those applicants are subject to public procurement requirements.⁴ Subject applicants would still need to complete a competitive bidding process in compliance with the rules and would initiate a request for funding for Priority 1 services by filing an FCC Form 471. Those applicants not subject to state or local bidding requirements would still have to file an FCC Form 470 and wait 28 days to select a service provider. And, all of the Commission's competitive bidding rules, including filing an FCC Form 470 and waiting 28 days to select a provider, would still apply to all applications seeking support for Priority 2 services.

Contrary to what the Commission is proposing, the Commission should continue to require all applicants to use the FCC Form 470 process for all services to best promote a fair and consistent process for all applicants seeking E-rate support. The current FCC Form 470 process, which requires posting of the FCC Form 470 on the USAC website to initiate each applicant's

⁴ *NPRM* ¶¶ 21-25.

competitive bidding process, provides potential service providers with one easily accessible source for E-rate service requests. As such, it likely alerts a wider audience of service providers of the applicant's need for services than local or state RFP requirements would and thus provides a better opportunity for a competitive and open bid process. Further, requiring the FCC Form 470 process across the board enables one fair and consistent process across all states and all types of schools, thus better enabling funding to be distributed in a fair and consistent manner.

Additionally, to the extent that an applicant is seeking E-rate funding for both Priority 1 and Priority 2 services, eliminating the Form 470 requirement only for Priority 1 services, potentially means that an applicant would need to engage in separate bidding processes for Priority 1 and Priority 2 services. Or, the applicant would still need to use the FCC Form 470 process for all services. On balance, the proposed change to the FCC Form 470 process is likely to create more confusion for applicants and service providers and not be successful in streamlining the process. Instead of focusing on changes to the process, the Commission should focus on streamlining the FCC Form 470 itself.

B. Permitting a Service Provider to Give an Applicant Information About its Services During the Bid Selection Process Should Not Be Viewed as Inappropriate Conduct.

The Commission also proposes identifying certain conduct as inappropriate for the competitive bidding process.⁵ For the most part, Qwest agrees with the Bureau that the behaviors it has identified in the *NPRM* should be recognized as inappropriate conduct during the E-rate competitive bidding process. There is an exception. The Commission has proposed that inappropriate conduct would include a service provider providing information to the applicant about its products and services during the bid selection process. The Commission has proposed

⁵ *Id.* ¶¶ 29-31.

that a service provider can provide information to an applicant about products or services -- including demonstrations -- before the applicant posts the FCC Form 470, *but not during the bid selection process*.

This proposed requirement would unnecessarily limit the service provider's ability to explain its services to the applicant at the time when an applicant may most need to understand what the service provider is offering to provide. The Bureau provides no explanation as to why this should be viewed as inappropriate conduct. Until the Bureau provides an explanation as to why this should be considered inappropriate conduct and permits comments on that explanation, the Bureau should decline to prohibit such conduct during the competitive bidding process. Otherwise, as currently proposed, this requirement may hamper an applicant's ability to fully understand service providers' service offerings and in turn inhibit the applicant's evaluation and selection of the most cost-effective bid.

C. The E-Rate Program Should Not Support Wireless Internet Access Service For Portable Devices Used Off of School or Library Premises.

The Commission proposes to provide full E-rate support for wireless Internet access service used with portable learning devices that are used off school or library premises. Currently, the E-rate program supports wireless Internet access service used on school grounds. If a device, such as a laptop, that provides wireless Internet access service is taken off school grounds, the E-rate participant must cost-allocate for the time the device is not on school grounds.

Qwest recognizes the potential benefits of permitting E-rate funds to fully support the wireless Internet access service for these portable devices including making it administratively easier to request and receive the funding without needing to cost-allocate and potentially enhancing educational opportunities for students away from school. But, having E-rate funds

support use of these devices off of school premises greatly increases this risk that the devices will not be used for educational purposes, and in turn that E-rate funding will not be serving its intended purposes. Until sufficient safeguards can be put in place to ensure that devices used off school grounds are primarily being used for educational purposes, Qwest recommends that the Commission not expand E-rate funding to support off-premises use of mobile devices.

Further, Qwest is concerned that the E-rate program has finite resources, and that permitting this additional funding could greatly increase requests for E-rate funds. It is noticeable that in recent years significant increases in universal service funding -- initially in the high-cost program and now also in the low-income program -- have been to support wireless services. Extending E-rate funding as proposed, will not only put that funding at risk of not being used for intended program purposes, but will also risk reducing E-rate funding for other services that are being used on-premises to support educational pursuits.

D. The Commission Should Not Expand E-rate Funding to Leasing of Dark Fiber.

The Commission proposes making leased dark fiber from any source eligible for funding as a priority one service. Applicants would be required to provide the necessary electronics and use the dark fiber immediately. For reasons Qwest has previously expressed, dark fiber, by itself, should not be eligible for E-rate funding.⁶ Unlit fiber provides no telecommunications or Internet services that would support the purposes of the E-rate program. Leasing of dark fiber could consume Priority 1 funding without serving E-rate program purposes.

If, however, the leasing of the dark fiber were tied to immediately lighting and using the fiber, as seems to be proposed by the Commission, that might address the concern that the fiber

⁶ See Comments of Qwest Communications International Inc., CC Docket No. 02-6, filed Sept. 18, 2008.

was not being used for E-rate program purposes. Nevertheless, Qwest remains concerned about the impacts of permitting the E-rate program to fund significant purchases of telecommunications and Internet network equipment from entities that are not telecommunications providers. The universal service fund (USF or Fund) is based on contributions from providers of telecommunications and interconnected VoIP services. Municipalities leasing dark fiber that are not telecommunications providers have no obligation to contribute into the USF. The more the E-rate program distributes support to entities that do not contribute into the USF, the more telecommunications and interconnected VoIP providers are required to contribute into the Fund without obtaining effective support from the Fund. Eventually this makes the Fund unsustainable. The Commission should consider carefully permitting dark fiber leased from non-telecommunications providers to be eligible for E-rate support.

III. CONCLUSION

For these reasons, the Commission should decline to adopt its proposed positions on these four issues.

Respectfully submitted,

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Its Attorneys

July 9, 2010

CERTIFICATE OF SERVICE

I, Richard Grozier, do hereby certify that I have caused the foregoing **COMMENTS OF QWEST COMMUNICATIONS INTERNATIONAL INC.** to be: 1) filed with the FCC via its Electronic Comment Filing System in CC Docket No. 02-6 and GN Docket No. 09-51; 2) served via e-mail on Ms. Regina Brown, Telecommunications Access Policy Division, Wireline Competition Bureau at Regina.brown@fcc.gov and Mr. Charles Tyler, Telecommunications Access Policy Division, Wireline Competition Bureau at Charles.tyler@fcc.gov; and 3) served via e-mail on the FCC's duplicating contractor, Best Copy and Printing, Inc. at fcc@bcpiweb.com.

/s/Richard Grozier

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